

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for August 6, 2003 PLANNING COMMISSION MEETING

P.A.S.: Miscellaneous #03008

PROPOSAL: Require petitions for the vacation of streets and alleys to be filed in the Planning Department and charge a fee.

CONCLUSION: The petition will be processed similarly to subdivision and zoning applications, notice of public hearings will be provided, and some of the cost of processing the application will be covered by the fee.

RECOMMENDATION:

Approval

LEGAL DESCRIPTION:

Chapter 14.20, Vacation of Public Ways of the LMC

ANALYSIS:

At this time, the City Clerk is required by ordinance to receive petitions for vacating street or alley right-of-way. The Clerk opens a file, has Law review the legal description, then sends the file to Public Works for review, and Public Works send the file to Planning. Planning then advertises the Planning Commission hearings, and processes the petitions through the hearing process. This proposal would shorten the process by initiating it with Planning.

Planning would also plan to handle the process differently. At present, any one abutting property owner can file a petition to vacate a street or alley. However the ordinance requires all abutting property owners to file a petition before the City can approve the vacation. Many times the remaining abutting property owners will not file their petitions in a timely manner or not at all. The City has created a file for the petition that may never proceed. Also ownership of the abutting property may change during an extended period of time.

The proposed procedure would require the application to include signed petitions from all abutting owners and ownership certificates. The Planning Department would distribute the application to Law, Public Works & Utilities, and other departments, Lincoln Electric System and other utility companies for their review and comment.

The proposal would provide for notifying property owners surrounding the proposed vacation of the public hearings. At the present time the only notice is the Planning Commission's printed agenda.

The proposed fee is to cover the legal notice in the newspaper and mailings, and some of the staff time to process the application.

Attached is the proposed language in legislative form.

Prepared by:

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DATE: July 24, 2003

APPLICANT:

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Chapter 14.20
VACATION OF PUBLIC WAYS

Sections:

- 14.20.010** **Copy of Vacation Ordinance to Taxing Official; Property Placed on Tax Rolls; Supplementary Definitions.**
- 14.20.020** **Procedure for Vacation of Public Ways; Filing Vacation Ordinance.**
- 14.20.030** **Notice of Public Hearing.**
- 14.20.040** **Fees.**

14.20.010 Copy of Vacation Ordinance to Taxing Official; Property Placed on Tax Rolls; Supplementary Definitions.

Upon the vacation of any street, alley, or public way by the City Council, the City Clerk shall forthwith furnish to the appropriate taxing official for the City of Lincoln a certified copy of the ordinance vacating such street, alley or public way.

The taxing official shall forthwith place such vacated street, alley or public way upon the tax rolls of the city.

Street, alley, and public way as used in this chapter shall include but not be limited to, streets, alleys, and public ways not actually being publicly maintained or not actually, physically open to the use of the public. (Ord. 9970 §2; May 4, 1970: prior Ord. 3968 §1; July 3, 1944).

14.20.020 Procedure for Vacation of Public Ways; Filing Vacation Ordinance

For the vacation of any street, alley, or public way, the owners of 100% of the property abutting upon such street, alley, or public way proposed to be vacated shall file with the City Clerk Planning Director a petition for such proposed vacation upon forms approved by the City Attorney. Upon receipt of said petition, the Planning Director shall refer the proposed vacation to the Planning Commission. The Planning Commission shall hold a public hearing upon the proposed vacation and make a report regarding its conformity to the Comprehensive Plan. The report of the Planning Commission, along with a report from the Planning Director ~~Before passing an ordinance for the vacation of any street, alley, or public way, the City Council shall require reports from the executive branch of the city as to how such proposed vacation would affect the City's planning, street system, traffic requirements, public utilities, and public improvements, shall be filed with the City Council.~~ The Planning Director's report shall include information as to whether any sidewalk bonds are still outstanding and shall include the estimated cost of any required reconstruction of street and alley returns and/or sidewalks, and the cost of relocating any existing utilities, such as telephone facilities,

1 electrical facilities, water mains, sanitary sewers, etc. The report shall also include the amount
2 determined by the city to be the property price to be paid by a purchaser for such street, alley,
3 or public way sought to be vacated, or in the alternative, a recommended exchange of
4 property with the city. After the reports of the Planning Commission and the Planning Director
5 have been filed, the City Council shall, before enacting any ordinance vacating the street, alley,
6 or public way proposed to be vacated, hold a public hearing in relation thereto.

7 The petitioners shall be required to deposit the money necessary to accomplish the
8 required reconstruction and the amount determined to be the proper purchase price prior to
9 the introduction of an ordinance to accomplish the requested vacation. Such funds deposited
10 with the City Clerk will be held until the vacation has become effective, at which time the
11 amount deposited for the necessary reconstruction shall be deposited by the City Clerk in the
12 street construction fund to accomplish the required reconstruction. Net proceeds paid to the
13 city for the purchase of a vacated street, alley, or public way shall be placed in the advance
14 acquisition fund.

15 Upon the passage of any ordinance vacating a street, alley, or public way in the City
16 of Lincoln, it shall be the duty of the City Clerk to immediately file a certified copy of said
17 ordinance in the office of the Register of Deeds for Lancaster County, Nebraska.

18 This section shall not be interpreted so as to interfere with the city's request for vacation
19 of a street, alley, or public way when the City Council has deemed such vacation to be in the
20 best interest of the city. (Ord. 13059 §1; December 15, 1980: prior Ord. 8752 §1; June 14,
21 1965).

22 23 **14.20.030 Notice of Public Hearing**

24 Public hearings required to be held by the Planning Commission and City Council
25 under this chapter shall not be held until notice thereof has been given in compliance with the
26 following provisions:

27 (a) At least eight days before the date of hearing, the City Clerk shall have
28 published in a daily newspaper having a general circulation in the City of Lincoln a notice of
29 time, place and subject matter of the public hearing.

30 (b) At least ten days before the date of hearing, the Planning Director shall cause
31 notice of the proposed vacation to be sent to

32 (i) the petitioners
33 (ii) to the record owners of property located within 200 feet of the proposed
34 vacation when such owners' property is located within the corporate limits of the City and to
35 the record owners of property located within one-fourth mile of the proposed vacation when
36 such owners' property is located outside the corporate limits of the City. Such notice shall be
37 sent by regular United States mail, postage prepaid, to each petitioner and each such record
38 owner of property at the address as it appears on the last equalized assessment roll of the
39 county or as known to the Planning Director.

40 (c) No decision or recommendation which is required to be made under this
41 chapter shall be void or invalidated or affected in any way for any irregularity, defect, error, or
42 failure on the part of the Planning Director to cause notice to be given as required in
43 subsection (b) above.

1 (d) It shall not be necessary to give further notice of an adjourned or continued
2 public hearing.

3 (e) Other notice, as may be deemed appropriate by the public body conducting the
4 hearing, may be given in advance of public hearings. Such notice is not mandatory or
5 required as a condition precedent to any such public hearing.

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7 **14.20.040 Fees.**

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9 An application fee of \$125.00 shall be charged at the time of filing an application for
10 a vacation of public ways.